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# S. 877

[Report No. 108–102]

To regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

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## IN THE SENATE OF THE UNITED STATES

APRIL 10, 2003

Mr. BURNS (for himself, Mr. WYDEN, Mr. STEVENS, Mr. BREAUX, Mr. THOMAS, Ms. LANDRIEU, Mr. SCHUMER, Mr. TALENT, Mr. JOHNSON, Mr. GREGG, Mr. CARPER, Mr. LIEBERMAN, Mr. NELSON of Florida, Ms. SNOWE, Mr. CHAMBLISS, Mr. DODD, Mr. LAUTENBERG, Mr. EDWARDS, and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

JULY 16, 2003

Reported by Mr. MCCAIN, with an amendment

[Strike all after the enacting clause and insert the part printed in italic]

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## A BILL

To regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Controlling the Assault  
3 of Non-Solicited Pornography and Marketing Act of  
4 2003”, or the “CAN-SPAM Act of 2003”.

5 **SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.**

6 (a) ~~FINDINGS.~~—The Congress finds the following:

7 (1) There is a right of free speech on the Inter-  
8 net.

9 (2) The Internet has increasingly become a crit-  
10 ical mode of global communication and now presents  
11 unprecedented opportunities for the development and  
12 growth of global commerce and an integrated world-  
13 wide economy.

14 (3) In order for global commerce on the Inter-  
15 net to reach its full potential, individuals and enti-  
16 ties using the Internet and other online services  
17 should be prevented from engaging in activities that  
18 prevent other users and Internet service providers  
19 from having a reasonably predictable, efficient, and  
20 economical online experience.

21 (4) Unsolicited commercial electronic mail can  
22 be a mechanism through which businesses advertise  
23 and attract customers in the online environment.

24 (5) The receipt of unsolicited commercial elec-  
25 tronic mail may result in costs to recipients who  
26 cannot refuse to accept such mail and who incur

1 costs for the storage of such mail, or for the time  
2 spent accessing, reviewing, and discarding such mail,  
3 or for both.

4 (6) Unsolicited commercial electronic mail may  
5 impose significant monetary costs on providers of  
6 Internet access services, businesses, and educational  
7 and nonprofit institutions that carry and receive  
8 such mail, as there is a finite volume of mail that  
9 such providers, businesses, and institutions can han-  
10 dle without further investment in infrastructure.

11 (7) Some unsolicited commercial electronic mail  
12 contains material that many recipients may consider  
13 vulgar or pornographic in nature.

14 (8) While some senders of unsolicited commer-  
15 cial electronic mail messages provide simple and reli-  
16 able ways for recipients to reject (or “opt-out” of)  
17 receipt of unsolicited commercial electronic mail  
18 from such senders in the future, other senders pro-  
19 vide no such “opt-out” mechanism, or refuse to  
20 honor the requests of recipients not to receive elec-  
21 tronic mail from such senders in the future, or both.

22 (9) An increasing number of senders of unsolic-  
23 ited commercial electronic mail purposefully disguise  
24 the source of such mail so as to prevent recipients  
25 from responding to such mail quickly and easily.

1           (10) An increasing number of senders of unso-  
 2           licited commercial electronic mail purposefully in-  
 3           clude misleading information in the message's sub-  
 4           ject lines in order to induce the recipients to view  
 5           the messages.

6           (11) In legislating against certain abuses on the  
 7           Internet, Congress should be very careful to avoid  
 8           infringing in any way upon constitutionally protected  
 9           rights, including the rights of assembly, free speech,  
 10          and privacy.

11          (b) CONGRESSIONAL DETERMINATION OF PUBLIC  
 12          POLICY.—On the basis of the findings in subsection (a),  
 13          the Congress determines that—

14               (1) there is a substantial government interest in  
 15               regulation of unsolicited commercial electronic mail;

16               (2) senders of unsolicited commercial electronic  
 17               mail should not mislead recipients as to the source  
 18               or content of such mail; and

19               (3) recipients of unsolicited commercial elec-  
 20               tronic mail have a right to decline to receive addi-  
 21               tional unsolicited commercial electronic mail from  
 22               the same source.

23          **SEC. 3. DEFINITIONS.**

24          In this Act:

1           (1) AFFIRMATIVE CONSENT.—The term “af-  
 2       firmative consent”, when used with respect to a  
 3       commercial electronic mail message, means that the  
 4       recipient has expressly consented to receive the mes-  
 5       sage, either in response to a clear and conspicuous  
 6       request for such consent or at the recipient’s own  
 7       initiative.

8           (2) COMMERCIAL ELECTRONIC MAIL MES-  
 9       SAGE.—

10           (A) IN GENERAL.—The term “commercial  
 11       electronic mail message” means any electronic  
 12       mail message the primary purpose of which is  
 13       the commercial advertisement or promotion of a  
 14       commercial product or service (including con-  
 15       tent on an Internet website operated for a com-  
 16       mercial purpose).

17           (B) REFERENCE TO COMPANY OR  
 18       WEBSITE.—The inclusion of a reference to a  
 19       commercial entity or a link to the website of a  
 20       commercial entity in an electronic mail message  
 21       does not, by itself, cause such message to be  
 22       treated as a commercial electronic mail message  
 23       for purposes of this Act if the contents or cir-  
 24       cumstances of the message indicate a primary  
 25       purpose other than commercial advertisement

1 or promotion of a commercial product or serv-  
2 ice.

3 ~~(3) COMMISSION.—The term “Commission”~~  
4 means the Federal Trade Commission.

5 ~~(4) DOMAIN NAME.—The term “domain name”~~  
6 means any alphanumeric designation which is reg-  
7 istered with or assigned by any domain name reg-  
8 istrar, domain name registry, or other domain name  
9 registration authority as part of an electronic ad-  
10 dress on the Internet.

11 ~~(5) ELECTRONIC MAIL ADDRESS.—The term~~  
12 “electronic mail address” means a destination, com-  
13 monly expressed as a string of characters, consisting  
14 of a unique user name or mailbox (commonly re-  
15 ferred to as the “local part”) and a reference to an  
16 Internet domain (commonly referred to as the “do-  
17 main part”), to which an electronic mail message  
18 can be sent or delivered.

19 ~~(6) ELECTRONIC MAIL MESSAGE.—The term~~  
20 “electronic mail message” means a message sent to  
21 an electronic mail address.

22 ~~(7) FTC ACT.—The term “FTC Act” means~~  
23 the Federal Trade Commission Act (15 U.S.C. 41 et  
24 seq.).

1           (8) ~~HEADER INFORMATION.~~—The term “header  
2           information” means the source, destination, and  
3           routing information attached to an electronic mail  
4           message, including the originating domain name and  
5           originating electronic mail address.

6           (9) ~~IMPLIED CONSENT.~~—The term “implied  
7           consent”, when used with respect to a commercial  
8           electronic mail message, means that—

9                   (A) ~~within the 3-year period ending upon~~  
10                  receipt of such message, there has been a busi-  
11                  ness transaction between the sender and the re-  
12                  cipient (including a transaction involving the  
13                  provision, free of charge, of information, goods,  
14                  or services requested by the recipient); and

15                  (B) ~~the recipient was, at the time of such~~  
16                  transaction or thereafter in the first electronic  
17                  mail message received from the sender after the  
18                  effective date of this Act, provided a clear and  
19                  conspicuous notice of an opportunity not to re-  
20                  ceive unsolicited commercial electronic mail  
21                  messages from the sender and has not exercised  
22                  such opportunity.

23           If a sender operates through separate lines of busi-  
24           ness or divisions and holds itself out to the recipient,  
25           both at the time of the transaction described in sub-

1 paragraph (A) and at the time the notice under sub-  
 2 paragraph (B) was provided to the recipient, as that  
 3 particular line of business or division rather than as  
 4 the entity of which such line of business or division  
 5 is a part, then the line of business or the division  
 6 shall be treated as the sender for purposes of this  
 7 paragraph.

8 (10) INITIATE.—The term “initiate”, when  
 9 used with respect to a commercial electronic mail  
 10 message, means to originate such message or to pro-  
 11 cure the origination of such message, but shall not  
 12 include actions that constitute routine conveyance of  
 13 such message.

14 (11) INTERNET.—The term “Internet” has the  
 15 meaning given that term in the Internet Tax Free-  
 16 dom Act (47 U.S.C. 151 nt).

17 (12) INTERNET ACCESS SERVICE.—The term  
 18 “Internet access service” has the meaning given that  
 19 term in section 231(e)(4) of the Communications  
 20 Act of 1934 (47 U.S.C. 231(e)(4)).

21 (13) PROTECTED COMPUTER.—The term “pro-  
 22 tected computer” has the meaning given that term  
 23 in section 1030(e)(2) of title 18, United States  
 24 Code.



1           (14) RECIPIENT.—The term “recipient”, when  
2       used with respect to a commercial electronic mail  
3       message, means an authorized user of the electronic  
4       mail address to which the message was sent or deliv-  
5       ered. If a recipient of a commercial electronic mail  
6       message has 1 or more electronic mail addresses in  
7       addition to the address to which the message was  
8       sent or delivered, the recipient shall be treated as a  
9       separate recipient with respect to each such address.  
10      If an electronic mail address is reassigned to a new  
11      user, the new user shall not be treated as a recipient  
12      of any commercial electronic mail message sent or  
13      delivered to that address before it was reassigned.

14           (15) ROUTINE CONVEYANCE.—The term “rou-  
15      tine conveyance” means the transmission, routing,  
16      relaying, handling, or storing, through an automatic  
17      technical process, of an electronic mail message for  
18      which another person has provided and selected the  
19      recipient addresses.

20           (16) SENDER.—The term “sender”, when used  
21      with respect to a commercial electronic mail mes-  
22      sage, means a person who initiates such a message  
23      and whose product, service, or Internet web site is  
24      advertised or promoted by the message.

1           ~~(17) TRANSACTIONAL OR RELATIONSHIP MES-~~  
 2           ~~SAGES.—The term “transactional or relationship~~  
 3           ~~message” means an electronic mail message the pri-~~  
 4           ~~mary purpose of which is to facilitate, complete, con-~~  
 5           ~~firm, provide, or request information concerning—~~

6                     ~~(A) a commercial transaction that the re-~~  
 7                     ~~cipient has previously agreed to enter into with~~  
 8                     ~~the sender;~~

9                     ~~(B) an existing commercial relationship;~~  
 10                    ~~formed with or without an exchange of consid-~~  
 11                    ~~eration, involving the ongoing purchase or use~~  
 12                    ~~by the recipient of products or services offered~~  
 13                    ~~by the sender; or~~

14                    ~~(C) an existing employment relationship or~~  
 15                    ~~related benefit plan.~~

16           ~~(18) UNSOLICITED COMMERCIAL ELECTRONIC~~  
 17           ~~MAIL MESSAGE.—The term “unsolicited commercial~~  
 18           ~~electronic mail message” means any commercial~~  
 19           ~~electronic mail message that—~~

20                    ~~(A) is not a transactional or relationship~~  
 21                    ~~message; and~~

22                    ~~(B) is sent to a recipient without the re-~~  
 23                    ~~cipient’s prior affirmative or implied consent.~~

1 **SEC. 4. CRIMINAL PENALTY FOR UNSOLICITED COMMERCIAL ELECTRONIC MAIL CONTAINING FRAUDULENT ROUTING INFORMATION.**

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3  
4 (a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

5  
6  
7 **“§ 1351. Unsolicited commercial electronic mail containing fraudulent transmission information**

8  
9  
10 **“(a) IN GENERAL.—**Any person who initiates the transmission, to a protected computer in the United States, of an unsolicited commercial electronic mail message, with knowledge and intent that the message contains or is accompanied by header information that is materially false or materially misleading shall be fined or imprisoned for not more than 1 year, or both, under this title. For purposes of this subsection, header information that is technically accurate but includes an originating electronic mail address the access to which for purposes of initiating the message was obtained by means of false or fraudulent pretenses or representations shall be considered materially misleading.

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23 **“(b) DEFINITIONS.—**Any term used in subsection (a) that is defined in section 3 of the CAN-SPAM Act of 2003 has the meaning given it in that section.”.

1 (b) CONFORMING AMENDMENT.—The chapter anal-  
 2 ysis for chapter 63 of title 18, United States Code, is  
 3 amended by adding at the end the following:

“1351. Unsolicited commercial electronic mail containing fraudulent routing in-  
 formation”.

4 **SEC. 5. OTHER PROTECTIONS AGAINST UNSOLICITED COM-**  
 5 **MERCIAL ELECTRONIC MAIL.**

6 (a) REQUIREMENTS FOR TRANSMISSION OF MES-  
 7 SAGES.—

8 (1) PROHIBITION OF FALSE OR MISLEADING  
 9 TRANSMISSION INFORMATION.—It is unlawful for  
 10 any person to initiate the transmission, to a pro-  
 11 tected computer, of a commercial electronic mail  
 12 message that contains, or is accompanied by, header  
 13 information that is materially or intentionally false  
 14 or materially or intentionally misleading. For pur-  
 15 poses of this paragraph, header information that is  
 16 technically accurate but includes an originating elec-  
 17 tronic mail address the access to which for purposes  
 18 of initiating the message was obtained by means of  
 19 false or fraudulent pretenses or representations shall  
 20 be considered materially misleading.

21 (2) PROHIBITION OF DECEPTIVE SUBJECT  
 22 HEADINGS.—It is unlawful for any person to initiate  
 23 the transmission to a protected computer of a com-  
 24 mercial electronic mail message with a subject head-

ing that such person knows would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message.

(3) INCLUSION OF RETURN ADDRESS OR COMPARABLE MECHANISM IN UNSOLICITED COMMERCIAL ELECTRONIC MAIL.—

(A) IN GENERAL.—It is unlawful for any person to initiate the transmission to a protected computer of an unsolicited commercial electronic mail message that does not contain a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that—

(i) a recipient may use to submit, in a manner specified by the sender, a reply electronic mail message or other form of Internet-based communication requesting not to receive any future unsolicited commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(ii) remains capable of receiving such messages or communications for no less

1           than 30 days after the transmission of the  
2           original message.

3           ~~(B) MORE DETAILED OPTIONS POS-~~  
4           ~~SIBLE.—~~The sender of an unsolicited commer-  
5           cial electronic mail message may comply with  
6           subparagraph (A)(i) by providing the recipient  
7           a list or menu from which the recipient may  
8           choose the specific types of commercial elec-  
9           tronic mail messages the recipient wants to re-  
10          ceive or does not want to receive from the send-  
11          er, if the list or menu includes an option under  
12          which the recipient may choose not to receive  
13          any unsolicited commercial electronic mail mes-  
14          sages from the sender.

15          ~~(C) TEMPORARY INABILITY TO RECEIVE~~  
16          ~~MESSAGES OR PROCESS REQUESTS.—~~A return  
17          electronic mail address or other mechanism  
18          does not fail to satisfy the requirements of sub-  
19          paragraph (A) if it is unexpectedly and tempo-  
20          rarily unable to receive messages or process re-  
21          quests due to technical or capacity problems, if  
22          the problem with receiving messages or proc-  
23          essing requests is corrected within a reasonable  
24          time period.

1           (4) PROHIBITION OF TRANSMISSION OF UNSO-  
2           LICITED COMMERCIAL ELECTRONIC MAIL AFTER OB-  
3           JECTION.—If a recipient makes a request to a send-  
4           er, using a mechanism provided pursuant to para-  
5           graph (3), not to receive some or any unsolicited  
6           commercial electronic mail messages from such send-  
7           er, then it is unlawful—

8                   (A) for the sender to initiate the trans-  
9                   mission to the recipient, more than 10 business  
10                  days after the receipt of such request, of an un-  
11                  solicited commercial electronic mail message  
12                  that falls within the scope of the request;

13                  (B) for any person acting on behalf of the  
14                  sender to initiate the transmission to the recipi-  
15                  ent, more than 10 business days after the re-  
16                  ceipt of such request, of an unsolicited commer-  
17                  cial electronic mail message that such person  
18                  knows or consciously avoids knowing falls with-  
19                  in the scope of the request; or

20                  (C) for any person acting on behalf of the  
21                  sender to assist in initiating the transmission to  
22                  the recipient, through the provision or selection  
23                  of addresses to which the message will be sent,  
24                  of an unsolicited commercial electronic mail  
25                  message that the person knows, or consciously

1 avoids knowing, would violate subparagraph (A)  
 2 or (B).

3 ~~(5) INCLUSION OF IDENTIFIER, OPT-OUT, AND~~  
 4 ~~PHYSICAL ADDRESS IN UNSOLICITED COMMERCIAL~~  
 5 ~~ELECTRONIC MAIL.—It is unlawful for any person to~~  
 6 ~~initiate the transmission of any unsolicited commer-~~  
 7 ~~cial electronic mail message to a protected computer~~  
 8 ~~unless the message provides—~~

9 (A) clear and conspicuous identification  
 10 that the message is an advertisement or solici-  
 11 tation;

12 (B) clear and conspicuous notice of the op-  
 13 portunity under paragraph (3) to decline to re-  
 14 ceive further unsolicited commercial electronic  
 15 mail messages from the sender; and

16 (C) a valid physical postal address of the  
 17 sender.

18 ~~(b) PROHIBITION OF TRANSMISSION OF UNLAWFUL~~  
 19 ~~UNSOLICITED COMMERCIAL ELECTRONIC MAIL TO CER-~~  
 20 ~~TAIN HARVESTED ELECTRONIC MAIL ADDRESSES.—~~

21 ~~(1) IN GENERAL.—It is unlawful for any person~~  
 22 ~~to initiate the transmission, to a protected computer,~~  
 23 ~~of an unsolicited commercial electronic mail message~~  
 24 ~~that is unlawful under subsection (a), or to assist in~~  
 25 ~~the origination of such a message through the provi-~~



1 sion or selection of addresses to which the message  
 2 will be sent, if such person knows that, or acts with  
 3 reckless disregard as to whether—

4 (A) the electronic mail address of the re-  
 5 cipient was obtained, using an automated  
 6 means, from an Internet website or proprietary  
 7 online service operated by another person; or

8 (B) the website or proprietary online serv-  
 9 ice from which the address was obtained in-  
 10 cluded, at the time the address was obtained, a  
 11 notice stating that the operator of such a  
 12 website or proprietary online service will not  
 13 give, sell, or otherwise transfer addresses main-  
 14 tained by such site or service to any other party  
 15 for the purpose of initiating, or enabling others  
 16 to initiate, unsolicited electronic mail messages.

17 (2) **DISCLAIMER.**—Nothing in this subsection  
 18 creates an ownership or proprietary interest in such  
 19 electronic mail addresses.

20 (c) **COMPLIANCE PROCEDURES.**—An action for viola-  
 21 tion of paragraph (2), (3), (4), or (5) of subsection (a)  
 22 may not proceed if the person against whom the action  
 23 is brought demonstrates that—

24 (1) the person has established and imple-  
 25 mented, with due care, reasonable practices and pro-

1       cedures to effectively prevent violations of such para-  
2       graph; and

3           ~~(2) the violation occurred despite good faith ef-~~  
4       forts to maintain compliance with such practices and  
5       procedures.

6   **SEC. 6. ENFORCEMENT BY FEDERAL TRADE COMMISSION.**

7       ~~(a) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR~~  
8   PRACTICE.—Except as provided in subsection (b), this Act  
9   shall be enforced by the Commission as if the violation  
10   of this Act were an unfair or deceptive act or practice pro-  
11   scribed under section 18(a)(1)(B) of the Federal Trade  
12   Commission Act ~~(15 U.S.C. 57a(a)(1)(B))~~.

13       ~~(b) ENFORCEMENT BY CERTAIN OTHER AGEN-~~  
14   CIES.—Compliance with this Act shall be enforced—

15           ~~(1) under section 8 of the Federal Deposit In-~~  
16       surance Act ~~(12 U.S.C. 1818)~~, in the case of—

17                   ~~(A) national banks; and Federal branches~~  
18                   and Federal agencies of foreign banks; and any  
19                   subsidiaries of such entities ~~(except brokers;~~  
20                   dealers; persons providing insurance; invest-  
21                   ment companies; and investment advisers); by  
22                   the Office of the Comptroller of the Currency;

23                   ~~(B) member banks of the Federal Reserve~~  
24                   System ~~(other than national banks); branches~~  
25                   and agencies of foreign banks ~~(other than Fed-~~

1       eral branches, Federal agencies, and insured  
2       State branches of foreign banks), commercial  
3       lending companies owned or controlled by for-  
4       eign banks, organizations operating under sec-  
5       tion 25 or 25A of the Federal Reserve Act (12  
6       U.S.C. 601 and 611), and bank holding compa-  
7       nies and their nonbank subsidiaries or affiliates  
8       (except brokers, dealers, persons providing in-  
9       surance, investment companies, and investment  
10      advisers), by the Board;

11           (C) banks insured by the Federal Deposit  
12      Insurance Corporation (other than members of  
13      the Federal Reserve System) insured State  
14      branches of foreign banks, and any subsidiaries  
15      of such entities (except brokers, dealers, per-  
16      sons providing insurance, investment compa-  
17      nies, and investment advisers), by the Board of  
18      Directors of the Federal Deposit Insurance Cor-  
19      poration; and

20           (D) savings associations the deposits of  
21      which are insured by the Federal Deposit In-  
22      surance Corporation, and any subsidiaries of  
23      such savings associations (except brokers, deal-  
24      ers, persons providing insurance, investment

1           companies, and investment advisers), by the Di-  
2           rector of the Office of Thrift Supervision;

3           ~~(2) under the Federal Credit Union Act (12~~  
4           ~~U.S.C. 1751 et seq.)~~ by the Board of the National  
5           Credit Union Administration with respect to any  
6           Federally insured credit union, and any subsidiaries  
7           of such a credit union;

8           ~~(3) under the Securities Exchange Act of 1934~~  
9           ~~(15 U.S.C. 78a et seq.)~~ by the Securities and Ex-  
10          change Commission with respect to any broker or  
11          dealer;

12          ~~(4) under the Investment Company Act of 1940~~  
13          ~~(15 U.S.C. 80a-1 et seq.)~~ by the Securities and Ex-  
14          change Commission with respect to investment com-  
15          panies;

16          ~~(5) under the Investment Advisers Act of 1940~~  
17          ~~(15 U.S.C. 80b-1 et seq.)~~ by the Securities and Ex-  
18          change Commission with respect to investment ad-  
19          visers registered under that Act;

20          ~~(6) under State insurance law in the case of~~  
21          any person engaged in providing insurance, by the  
22          applicable State insurance authority of the State in  
23          which the person is domiciled, subject to section 104  
24          of the Gramm-Bliley-Leach Act (15 U.S.C. 6701);

1           (7) under part A of subtitle VII of title 49,  
 2       United States Code, by the Secretary of Transpor-  
 3       tation with respect to any air carrier or foreign air  
 4       carrier subject to that part;

5           (8) under the Packers and Stockyards Act,  
 6       1921 (7 U.S.C. 181 et seq.) (except as provided in  
 7       section 406 of that Act (7 U.S.C. 226, 227)), by the  
 8       Secretary of Agriculture with respect to any activi-  
 9       ties subject to that Act;

10          (9) under the Farm Credit Act of 1971 (12  
 11       U.S.C. 2001 et seq.) by the Farm Credit Adminis-  
 12       tration with respect to any Federal land bank, Fed-  
 13       eral land bank association, Federal intermediate  
 14       credit bank, or production credit association; and

15          (10) under the Communications Act of 1934  
 16       (47 U.S.C. 151 et seq.) by the Federal Communica-  
 17       tions Commission with respect to any person subject  
 18       to the provisions of that Act.

19       (c) EXERCISE OF CERTAIN POWERS.—For the pur-  
 20       pose of the exercise by any agency referred to in sub-  
 21       section (b) of its powers under any Act referred to in that  
 22       subsection, a violation of this Act is deemed to be a viola-  
 23       tion of a requirement imposed under that Act. In addition  
 24       to its powers under any provision of law specifically re-  
 25       ferred to in subsection (b), each of the agencies referred

1 to in that subsection may exercise, for the purpose of en-  
 2 forcing compliance with any requirement imposed under  
 3 this Act, any other authority conferred on it by law.

4 (d) ACTIONS BY THE COMMISSION.—The Commis-  
 5 sion shall prevent any person from violating this Act in  
 6 the same manner, by the same means, and with the same  
 7 jurisdiction, powers, and duties as though all applicable  
 8 terms and provisions of the Federal Trade Commission  
 9 Act (~~15~~ U.S.C. 41 et seq.) were incorporated into and  
 10 made a part of this Act. Any entity that violates any provi-  
 11 sion of that subtitle is subject to the penalties and entitled  
 12 to the privileges and immunities provided in the Federal  
 13 Trade Commission Act in the same manner, by the same  
 14 means, and with the same jurisdiction, power, and duties  
 15 as though all applicable terms and provisions of the Fed-  
 16 eral Trade Commission Act were incorporated into and  
 17 made a part of that subtitle.

18 (e) ENFORCEMENT BY STATES.—

19 (1) CIVIL ACTION.—In any case in which the  
 20 attorney general of a State has reason to believe  
 21 that an interest of the residents of that State has  
 22 been or is threatened or adversely affected by any  
 23 person engaging in a practice that violates section 5  
 24 of this Act, the State, as *parens patriae*, may bring  
 25 a civil action on behalf of the residents of the State

1 in a district court of the United States of appro-  
 2 priate jurisdiction or in any other court of com-  
 3 petent jurisdiction—

4 (A) to enjoin further violation of section 5  
 5 of this Act by the defendant; or

6 (B) to obtain damages on behalf of resi-  
 7 dents of the State, in an amount equal to the  
 8 greater of—

9 (i) the actual monetary loss suffered  
 10 by such residents; or

11 (ii) the amount determined under  
 12 paragraph (2).

13 (2) STATUTORY DAMAGES.—

14 (A) IN GENERAL.—For purposes of para-  
 15 graph (1)(B)(ii), the amount determined under  
 16 this paragraph is the amount calculated by mul-  
 17 tiplying the number of willful, knowing, or neg-  
 18 ligent violations by an amount, in the discretion  
 19 of the court, of up to \$10 (with each separately  
 20 addressed unlawful message received by such  
 21 residents treated as a separate violation). In de-  
 22 termining the per-violation penalty under this  
 23 subparagraph, the court shall take into account  
 24 the degree of culpability, any history of prior  
 25 such conduct, ability to pay, the extent of eco-

1            nomic gain resulting from the violation, and  
2            such other matters as justice may require.

3            (B) LIMITATION.—For any violation of  
4            section 5 (other than section 5(a)(1)), the  
5            amount determined under subparagraph (A)  
6            may not exceed \$500,000, except that if the  
7            court finds that the defendant committed the  
8            violation willfully and knowingly, the court may  
9            increase the limitation established by this para-  
10          graph from \$500,000 to an amount not to ex-  
11          ceed \$1,500,000.

12          (3) ATTORNEY FEES.—In the case of any suc-  
13          cessful action under paragraph (1), the State shall  
14          be awarded the costs of the action and reasonable  
15          attorney fees as determined by the court.

16          (4) RIGHTS OF FEDERAL REGULATORS.—The  
17          State shall serve prior written notice of any action  
18          under paragraph (1) upon the Federal Trade Com-  
19          mission or the appropriate Federal regulator deter-  
20          mined under subsection (b) and provide the Commis-  
21          sion or appropriate Federal regulator with a copy of  
22          its complaint, except in any case in which such prior  
23          notice is not feasible, in which case the State shall  
24          serve such notice immediately upon instituting such



1 action. The Federal Trade Commission or appro-  
 2 priate Federal regulator shall have the right—

3 (A) to intervene in the action;

4 (B) upon so intervening, to be heard on all  
 5 matters arising therein;

6 (C) to remove the action to the appropriate  
 7 United States district court; and

8 (D) to file petitions for appeal.

9 (5) CONSTRUCTION.—For purposes of bringing  
 10 any civil action under paragraph (1), nothing in this  
 11 Act shall be construed to prevent an attorney gen-  
 12 eral of a State from exercising the powers conferred  
 13 on the attorney general by the laws of that State  
 14 to—

15 (A) conduct investigations;

16 (B) administer oaths or affirmations; or

17 (C) compel the attendance of witnesses or  
 18 the production of documentary and other evi-  
 19 dence.

20 (6) VENUE; SERVICE OF PROCESS.—

21 (A) VENUE.—Any action brought under  
 22 paragraph (1) may be brought in the district  
 23 court of the United States that meets applicable  
 24 requirements relating to venue under section  
 25 1391 of title 28, United States Code.

1                   (B) SERVICE OF PROCESS.—In an action  
2                   brought under paragraph (1), process may be  
3                   served in any district in which the defendant—

4                   (i) is an inhabitant; or

5                   (ii) maintains a physical place of busi-  
6                   ness.

7                   (7) LIMITATION ON STATE ACTION WHILE FED-  
8                   ERAL ACTION IS PENDING.—If the Commission or  
9                   other appropriate Federal agency under subsection  
10                  (b) has instituted a civil action or an administrative  
11                  action for violation of this Act, no State attorney  
12                  general may bring an action under this subsection  
13                  during the pendency of that action against any de-  
14                  fendant named in the complaint of the Commission  
15                  or the other agency for any violation of this Act al-  
16                  leged in the complaint.

17                  (f) ACTION BY PROVIDER OF INTERNET ACCESS  
18                  SERVICE.—

19                  (1) ACTION AUTHORIZED.—A provider of Inter-  
20                  net access service adversely affected by a violation of  
21                  section 5 may bring a civil action in any district  
22                  court of the United States with jurisdiction over the  
23                  defendant, or in any other court of competent juris-  
24                  diction, to—

1           (A) enjoin further violation by the defend-  
2           ant; or

3           (B) recover damages in an amount equal  
4           to the greater of—

5                 (i) actual monetary loss incurred by  
6                 the provider of Internet access service as a  
7                 result of such violation; or

8                 (ii) the amount determined under  
9                 paragraph (2).

10       (2) STATUTORY DAMAGES.—

11           (A) IN GENERAL.—For purposes of para-  
12           graph (1)(B)(ii), the amount determined under  
13           this paragraph is the amount calculated by mul-  
14           tiplying the number of willful, knowing, or neg-  
15           ligent violations by an amount, in the discretion  
16           of the court, of up to \$10 (with each separately  
17           addressed unlawful message carried over the fa-  
18           cilities of the provider of Internet access service  
19           or sent to an electronic mail address obtained  
20           from the provider of Internet access service in  
21           violation of section 5(b) treated as a separate  
22           violation). In determining the per-violation pen-  
23           alty under this subparagraph, the court shall  
24           take into account the degree of culpability, any  
25           history of prior such conduct, ability to pay, the

1 extent of economic gain resulting from the vio-  
 2 lation, and such other matters as justice may  
 3 require.

4 (B) LIMITATION.—For any violation of  
 5 section 5 (other than section 5(a)(1)), the  
 6 amount determined under subparagraph (A)  
 7 may not exceed \$500,000, except that if the  
 8 court finds that the defendant committed the  
 9 violation willfully and knowingly, the court may  
 10 increase the limitation established by this para-  
 11 graph from \$500,000 to an amount not to ex-  
 12 ceed \$1,500,000.

13 (3) ATTORNEY FEES.—In any action brought  
 14 pursuant to paragraph (1), the court may, in its dis-  
 15 cretion, require an undertaking for the payment of  
 16 the costs of such action, and assess reasonable costs,  
 17 including reasonable attorneys' fees, against any  
 18 party.

19 **SEC. 7. EFFECT ON OTHER LAWS.**

20 (a) FEDERAL LAW.—

21 (1) Nothing in this Act shall be construed to  
 22 impair the enforcement of section 223 or 231 of the  
 23 Communications Act of 1934 (47 U.S.C. 223 or  
 24 231, respectively), chapter 71 (relating to obscenity)  
 25 or 110 (relating to sexual exploitation of children) of

1 title 18, United States Code, or any other Federal  
2 criminal statute.

3 (2) Nothing in this Act shall be construed to af-  
4 fect in any way the Commission's authority to bring  
5 enforcement actions under FTC Act for materially  
6 false or deceptive representations in commercial elec-  
7 tronic mail messages.

8 (b) STATE LAW.—

9 (1) IN GENERAL.—This Act supersedes any  
10 State or local government statute, regulation, or rule  
11 regulating the use of electronic mail to send com-  
12 mercial messages.

13 (2) EXCEPTIONS.—Except as provided in para-  
14 graph (3), this Act does not supersede or pre-  
15 empt—

16 (A) State trespass, contract, or tort law or  
17 any civil action thereunder; or

18 (B) any provision of Federal, State, or  
19 local criminal law or any civil remedy available  
20 under such law that relates to acts of fraud or  
21 theft perpetrated by means of the unauthorized  
22 transmission of commercial electronic mail mes-  
23 sages.

24 (3) LIMITATION ON EXCEPTIONS.—Paragraph  
25 (2) does not apply to a State or local government

1 statute, regulation, or rule that directly regulates  
2 unsolicited commercial electronic mail and that  
3 treats the mere sending of unsolicited commercial  
4 electronic mail in a manner that complies with this  
5 Act as sufficient to constitute a violation of such  
6 statute, regulation, or rule or to create a cause of  
7 action thereunder.

8 (c) NO EFFECT ON POLICIES OF PROVIDERS OF  
9 INTERNET ACCESS SERVICE.—Nothing in this Act shall  
10 be construed to have any effect on the lawfulness or un-  
11 lawfulness, under any other provision of law, of the adop-  
12 tion, implementation, or enforcement by a provider of  
13 Internet access service of a policy of declining to transmit,  
14 route, relay, handle, or store certain types of electronic  
15 mail messages.

16 **SEC. 8. STUDY OF EFFECTS OF UNSOLICITED COMMERCIAL**  
17 **ELECTRONIC MAIL.**

18 (a) IN GENERAL.—Not later than 24 months after  
19 the date of the enactment of this Act, the Commission,  
20 in consultation with the Department of Justice and other  
21 appropriate agencies, shall submit a report to the Con-  
22 gress that provides a detailed analysis of the effectiveness  
23 and enforcement of the provisions of this Act and the need  
24 (if any) for the Congress to modify such provisions.

1        ~~(b) REQUIRED ANALYSIS.—The Commission shall in-~~  
 2        ~~clude in the report required by subsection (a) an analysis~~  
 3        ~~of the extent to which technological and marketplace de-~~  
 4        ~~velopments, including changes in the nature of the devices~~  
 5        ~~through which consumers access their electronic mail mes-~~  
 6        ~~sages, may affect the practicality and effectiveness of the~~  
 7        ~~provisions of this Act.~~

8        **SEC. 9. SEPARABILITY.**

9        If any provision of this Act or the application thereof  
 10       to any person or circumstance is held invalid, the remain-  
 11       der of this Act and the application of such provision to  
 12       other persons or circumstances shall not be affected.

13       **SEC. 10. EFFECTIVE DATE.**

14       The provisions of this Act shall take effect 120 days  
 15       after the date of the enactment of this Act.

16       **SECTION 1. SHORT TITLE.**

17       *This Act may be cited as the “Controlling the Assault*  
 18       *of Non-Solicited Pornography and Marketing Act of 2003”,*  
 19       *or the “CAN-SPAM Act of 2003”.*

20       **SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.**

21       *(a) FINDINGS.—The Congress finds the following:*

22                *(1) Electronic mail has become an extremely im-*  
 23                *portant and popular means of communication, relied*  
 24                *on by millions of Americans on a daily basis for per-*  
 25                *sonal and commercial purposes. Its low cost and glob-*

1        *al reach make it extremely convenient and efficient,*  
2        *and offer unique opportunities for the development*  
3        *and growth of frictionless commerce.*

4            (2) *The convenience and efficiency of electronic*  
5        *mail are threatened by the extremely rapid growth in*  
6        *the volume of unsolicited commercial electronic mail.*  
7        *Unsolicited commercial electronic mail is currently*  
8        *estimated to account for over 45 percent of all elec-*  
9        *tronic mail traffic, up from an estimated 7 percent*  
10       *in 2001, and the volume continues to rise. Most of*  
11       *these unsolicited commercial electronic mail messages*  
12       *are fraudulent or deceptive in one or more respects.*

13           (3) *The receipt of unsolicited commercial elec-*  
14        *tronic mail may result in costs to recipients who can-*  
15        *not refuse to accept such mail and who incur costs for*  
16        *the storage of such mail, or for the time spent access-*  
17        *ing, reviewing, and discarding such mail, or for both.*

18           (4) *The receipt of a large number of unsolicited*  
19        *messages also decreases the convenience of electronic*  
20        *mail and creates a risk that wanted electronic mail*  
21        *messages, both commercial and noncommercial, will*  
22        *be lost, overlooked, or discarded amidst the larger vol-*  
23        *ume of unwanted messages, thus reducing the reli-*  
24        *ability and usefulness of electronic mail to the recipi-*  
25        *ent.*



1           (5) *Some unsolicited commercial electronic mail*  
2           *contains material that many recipients may consider*  
3           *vulgar or pornographic in nature.*

4           (6) *The growth in unsolicited commercial elec-*  
5           *tronic mail imposes significant monetary costs on*  
6           *providers of Internet access services, businesses, and*  
7           *educational and nonprofit institutions that carry and*  
8           *receive such mail, as there is a finite volume of mail*  
9           *that such providers, businesses, and institutions can*  
10          *handle without further investment in infrastructure.*

11          (7) *Many senders of unsolicited commercial elec-*  
12          *tronic mail purposefully disguise the source of such*  
13          *mail.*

14          (8) *Many senders of unsolicited commercial elec-*  
15          *tronic mail purposefully include misleading informa-*  
16          *tion in the message's subject lines in order to induce*  
17          *the recipients to view the messages.*

18          (9) *While some senders of unsolicited commercial*  
19          *electronic mail messages provide simple and reliable*  
20          *ways for recipients to reject (or "opt-out" of) receipt*  
21          *of unsolicited commercial electronic mail from such*  
22          *senders in the future, other senders provide no such*  
23          *"opt-out" mechanism, or refuse to honor the requests*  
24          *of recipients not to receive electronic mail from such*  
25          *senders in the future, or both.*

1           (10) *Many senders of bulk unsolicited commer-*  
2           *cial electronic mail use computer programs to gather*  
3           *large numbers of electronic mail addresses on an*  
4           *automated basis from Internet websites or online serv-*  
5           *ices where users must post their addresses in order to*  
6           *make full use of the website or service.*

7           (11) *Many States have enacted legislation in-*  
8           *tended to regulate or reduce unsolicited commercial*  
9           *electronic mail, but these statutes impose different*  
10          *standards and requirements. As a result, they do not*  
11          *appear to have been successful in addressing the prob-*  
12          *lems associated with unsolicited commercial electronic*  
13          *mail, in part because, since an electronic mail ad-*  
14          *dress does not specify a geographic location, it can be*  
15          *extremely difficult for law-abiding businesses to know*  
16          *with which of these disparate statutes they are re-*  
17          *quired to comply.*

18          (12) *The problems associated with the rapid*  
19          *growth and abuse of unsolicited commercial electronic*  
20          *mail cannot be solved by Federal legislation alone.*  
21          *The development and adoption of technological ap-*  
22          *proaches and the pursuit of cooperative efforts with*  
23          *other countries will be necessary as well.*

1       (b) *CONGRESSIONAL DETERMINATION OF PUBLIC POL-*  
 2 *ICY.—On the basis of the findings in subsection (a), the*  
 3 *Congress determines that—*

4           (1) *there is a substantial government interest in*  
 5 *regulation of unsolicited commercial electronic mail*  
 6 *on a nationwide basis;*

7           (2) *senders of unsolicited commercial electronic*  
 8 *mail should not mislead recipients as to the source or*  
 9 *content of such mail; and*

10          (3) *recipients of unsolicited commercial elec-*  
 11 *tronic mail have a right to decline to receive addi-*  
 12 *tional unsolicited commercial electronic mail from the*  
 13 *same source.*

14 **SEC. 3. DEFINITIONS.**

15       *In this Act:*

16           (1) *AFFIRMATIVE CONSENT.—The term “affirma-*  
 17 *tive consent”, when used with respect to a commercial*  
 18 *electronic mail message, means that—*

19               (A) *the recipient expressly consented to re-*  
 20 *ceive the message, either in response to a clear*  
 21 *and conspicuous request for such consent or at*  
 22 *the recipient’s own initiative; and*

23               (B) *if the message is from a party other*  
 24 *than the party to which the recipient commu-*  
 25 *nicated such consent, the recipient was given*

1        *clear and conspicuous notice at the time the con-*  
 2        *sent was communicated that the recipient's elec-*  
 3        *tronic mail address could be transferred to such*  
 4        *other party for the purpose of initiating commer-*  
 5        *cial electronic mail messages.*

6        (2) *COMMERCIAL ELECTRONIC MAIL MESSAGE.—*

7            (A) *IN GENERAL.—The term “commercial*  
 8        *electronic mail message” means any electronic*  
 9        *mail message the primary purpose of which is*  
 10        *the commercial advertisement or promotion of a*  
 11        *commercial product or service (including content*  
 12        *on an Internet website operated for a commercial*  
 13        *purpose).*

14            (B) *REFERENCE TO COMPANY OR*  
 15        *WEBSITE.—The inclusion of a reference to a*  
 16        *commercial entity or a link to the website of a*  
 17        *commercial entity in an electronic mail message*  
 18        *does not, by itself, cause such message to be treat-*  
 19        *ed as a commercial electronic mail message for*  
 20        *purposes of this Act if the contents or cir-*  
 21        *cumstances of the message indicate a primary*  
 22        *purpose other than commercial advertisement or*  
 23        *promotion of a commercial product or service.*

24        (3) *COMMISSION.—The term “Commission”*  
 25        *means the Federal Trade Commission.*

1           (4) *DOMAIN NAME.*—*The term “domain name”*  
 2           *means any alphanumeric designation which is reg-*  
 3           *istered with or assigned by any domain name reg-*  
 4           *istrar, domain name registry, or other domain name*  
 5           *registration authority as part of an electronic address*  
 6           *on the Internet.*

7           (5) *ELECTRONIC MAIL ADDRESS.*—*The term*  
 8           *“electronic mail address” means a destination, com-*  
 9           *monly expressed as a string of characters, consisting*  
 10          *of a unique user name or mailbox (commonly referred*  
 11          *to as the “local part”) and a reference to an Internet*  
 12          *domain (commonly referred to as the “domain part”),*  
 13          *to which an electronic mail message can be sent or de-*  
 14          *livered.*

15          (6) *ELECTRONIC MAIL MESSAGE.*—*The term*  
 16          *“electronic mail message” means a message sent to a*  
 17          *unique electronic mail address.*

18          (7) *FTC ACT.*—*The term “FTC Act” means the*  
 19          *Federal Trade Commission Act (15 U.S.C. 41 et seq.).*

20          (8) *HEADER INFORMATION.*—*The term “header*  
 21          *information” means the source, destination, and rout-*  
 22          *ing information attached to an electronic mail mes-*  
 23          *sage, including the originating domain name and*  
 24          *originating electronic mail address, and any other in-*  
 25          *formation that appears in the line identifying, or*

1        *purporting to identify, a person initiating the mes-*  
 2        *sage.*

3        (9) *IMPLIED CONSENT.*—

4                (A) *IN GENERAL.*—*The term “implied con-*  
 5        *sent”, when used with respect to a commercial*  
 6        *electronic mail message, means that—*

7                        (i) *within the 3-year period ending*  
 8                        *upon receipt of such message, there has been*  
 9                        *a business transaction between the sender*  
 10                        *and the recipient (including a transaction*  
 11                        *involving the provision, free of charge, of in-*  
 12                        *formation, goods, or services requested by*  
 13                        *the recipient); and*

14                        (ii) *the recipient was, at the time of*  
 15                        *such transaction or thereafter in the first*  
 16                        *electronic mail message received from the*  
 17                        *sender after the effective date of this Act,*  
 18                        *provided a clear and conspicuous notice of*  
 19                        *an opportunity not to receive unsolicited*  
 20                        *commercial electronic mail messages from*  
 21                        *the sender and has not exercised such oppor-*  
 22                        *tunity.*

23                (B) *MERE VISITATION.*—*A visit by a recipi-*  
 24        *ent to a publicly available website shall not be*  
 25        *treated as a transaction for purposes of subpara-*

1        *graph (A)(i) if the recipient did not knowingly*  
 2        *submit the recipient's electronic mail address to*  
 3        *the operator of the website.*

4                (C) *SEPARATE LINES OF BUSINESS OR DIVI-*  
 5        *SIONS.—If a sender operates through separate*  
 6        *lines of business or divisions and holds itself out*  
 7        *to the recipient, both at the time of the trans-*  
 8        *action described in subparagraph (A)(i) and at*  
 9        *the time the notice under subparagraph (A)(ii)*  
 10       *was provided to the recipient, as that particular*  
 11       *line of business or division rather than as the en-*  
 12       *tity of which such line of business or division is*  
 13       *a part, then the line of business or the division*  
 14       *shall be treated as the sender for purposes of this*  
 15       *paragraph.*

16               (10) *INITIATE.—The term “initiate”, when used*  
 17       *with respect to a commercial electronic mail message,*  
 18       *means to originate or transmit such message or to*  
 19       *procure the origination or transmission of such mes-*  
 20       *sage, but shall not include actions that constitute rou-*  
 21       *tine conveyance of such message. For purposes of this*  
 22       *paragraph, more than 1 person may be considered to*  
 23       *have initiated a message.*

1           (11) *INTERNET*.—The term “Internet” has the  
 2           meaning given that term in the Internet Tax Freedom  
 3           Act (47 U.S.C. 151 nt).

4           (12) *INTERNET ACCESS SERVICE*.—The term  
 5           “Internet access service” has the meaning given that  
 6           term in section 231(e)(4) of the Communications Act  
 7           of 1934 (47 U.S.C. 231(e)(4)).

8           (13) *PROCURE*.—The term “procure”, when used  
 9           with respect to the initiation of a commercial elec-  
 10          tronic mail message, means intentionally to pay or  
 11          provide other consideration to, or induce, another per-  
 12          son to initiate such a message on one’s behalf, know-  
 13          ing, or consciously avoiding knowing, the extent to  
 14          which that person intends to comply with the require-  
 15          ments of this Act.

16          (14) *PROTECTED COMPUTER*.—The term “pro-  
 17          tected computer” has the meaning given that term in  
 18          section 1030(e)(2)(B) of title 18, United States Code.

19          (15) *RECIPIENT*.—The term “recipient”, when  
 20          used with respect to a commercial electronic mail  
 21          message, means an authorized user of the electronic  
 22          mail address to which the message was sent or deliv-  
 23          ered. If a recipient of a commercial electronic mail  
 24          message has 1 or more electronic mail addresses in  
 25          addition to the address to which the message was sent



1       or delivered, the recipient shall be treated as a sepa-  
 2       rate recipient with respect to each such address. If  
 3       an electronic mail address is reassigned to a new  
 4       user, the new user shall not be treated as a recipient  
 5       of any commercial electronic mail message sent or de-  
 6       livered to that address before it was reassigned.

7               (16) *ROUTINE CONVEYANCE*.—The term “routine  
 8       conveyance” means the transmission, routing, relay-  
 9       ing, handling, or storing, through an automatic tech-  
 10      nical process, of an electronic mail message for which  
 11      another person has identified the recipients or pro-  
 12      vided the recipient addresses.

13              (17) *SENDER*.—The term “sender”, when used  
 14      with respect to a commercial electronic mail message,  
 15      means a person who initiates such a message and  
 16      whose product, service, or Internet web site is adver-  
 17      tised or promoted by the message.

18              (18) *TRANSACTIONAL OR RELATIONSHIP MES-*  
 19      *SAGE*.—The term “transactional or relationship mes-  
 20      sage” means an electronic mail message the primary  
 21      purpose of which is—

22                   (A) to facilitate, complete, or confirm a  
 23                   commercial transaction that the recipient has  
 24                   previously agreed to enter into with the sender;

1           (B) to provide warranty information, prod-  
 2           uct recall information, or safety or security in-  
 3           formation with respect to a commercial product  
 4           or service used or purchased by the recipient;

5           (C) to provide—

6                 (i) notification concerning a change in  
 7                 the terms or features of;

8                 (ii) notification of a change in the re-  
 9                 cipient's standing or status with respect to;

10            or

11                 (iii) at regular periodic intervals, ac-  
 12                 count balance information or other type of  
 13                 account statement with respect to,

14           a subscription, membership, account, loan, or  
 15           comparable ongoing commercial relationship in-  
 16           volving the ongoing purchase or use by the re-  
 17           cipient of products or services offered by the  
 18           sender;

19           (D) to provide information directly related  
 20           to an employment relationship or related benefit  
 21           plan in which the recipient is currently involved,  
 22           participating, or enrolled; or

23           (E) to deliver goods or services, including  
 24           product updates or upgrades, that the recipient  
 25           is entitled to receive under the terms of a trans-

1           *action that the recipient has previously agreed to*  
 2           *enter into with the sender.*

3           (19) *UNSOLICITED COMMERCIAL ELECTRONIC*  
 4           *MAIL MESSAGE.—The term “unsolicited commercial*  
 5           *electronic mail message” means any commercial elec-*  
 6           *tronic mail message that—*

7                   *(A) is not a transactional or relationship*  
 8                   *message; and*

9                   *(B) is sent to a recipient without the recipi-*  
 10                  *ent’s prior affirmative or implied consent.*

11 **SEC. 4. CRIMINAL PENALTY FOR COMMERCIAL ELECTRONIC**  
 12                   **MAIL CONTAINING FRAUDULENT ROUTING**  
 13                   **INFORMATION.**

14           (a) *IN GENERAL.—Chapter 63 of title 18, United*  
 15           *States Code, is amended by adding at the end the following:*  
 16           **“§ 1351. Commercial electronic mail containing**  
 17           **fraudulent transmission information.**

18           “(a) *IN GENERAL.—Any person who initiates the*  
 19           *transmission, to a protected computer in the United States,*  
 20           *of a commercial electronic mail message, with knowledge*  
 21           *and intent that the message contains or is accompanied by*  
 22           *header information that is materially false or materially*  
 23           *misleading shall be fined or imprisoned for not more than*  
 24           *1 year, or both, under this title. For purposes of this sub-*  
 25           *section, header information that is technically accurate but*

1 *includes an originating electronic mail address the access*  
 2 *to which for purposes of initiating the message was obtained*  
 3 *by means of false or fraudulent pretenses or representations*  
 4 *shall be considered materially misleading.*

5 “(b) *DEFINITIONS.*—Any term used in subsection (a)  
 6 *that is defined in section 3 of the CAN-SPAM Act of 2003*  
 7 *has the meaning given it in that section.*”.

8 (b) *CONFORMING AMENDMENT.*—The chapter analysis  
 9 *for chapter 63 of title 18, United States Code, is amended*  
 10 *by adding at the end the following:*

*“1351. Commercial electronic mail containing fraudulent routing information.”.*

11 **SEC. 5. OTHER PROTECTIONS FOR USERS OF COMMERCIAL**  
 12 **ELECTRONIC MAIL.**

13 (a) *REQUIREMENTS FOR TRANSMISSION OF MES-*  
 14 *SAGES.*—

15 (1) *PROHIBITION OF FALSE OR MISLEADING*  
 16 *TRANSMISSION INFORMATION.*—It is unlawful for any  
 17 *person to initiate the transmission, to a protected*  
 18 *computer, of a commercial electronic mail message*  
 19 *that contains, or is accompanied by, header informa-*  
 20 *tion that is false or misleading. For purposes of this*  
 21 *paragraph—*

22 (A) *header information that is technically*  
 23 *accurate but includes an originating electronic*  
 24 *mail address the access to which for purposes of*  
 25 *initiating the message was obtained by means of*

1       *false or fraudulent pretenses or representations*  
 2       *shall be considered misleading; and*

3               *(B) a “from” line that accurately identifies*  
 4       *any person who initiated the message shall not*  
 5       *be considered false or misleading.*

6               *(2) PROHIBITION OF DECEPTIVE SUBJECT HEAD-*  
 7       *INGS.—It is unlawful for any person to initiate the*  
 8       *transmission to a protected computer of a commercial*  
 9       *electronic mail message with a subject heading that*  
 10       *such person knows would be likely to mislead a re-*  
 11       *cipient, acting reasonably under the circumstances,*  
 12       *about a material fact regarding the contents or sub-*  
 13       *ject matter of the message.*

14               *(3) INCLUSION OF RETURN ADDRESS OR COM-*  
 15       *PARABLE MECHANISM IN COMMERCIAL ELECTRONIC*  
 16       *MAIL.—*

17               *(A) IN GENERAL.—It is unlawful for any*  
 18       *person to initiate the transmission to a protected*  
 19       *computer of a commercial electronic mail mes-*  
 20       *sage that does not contain a functioning return*  
 21       *electronic mail address or other Internet-based*  
 22       *mechanism, clearly and conspicuously displayed,*  
 23       *that—*

24                       *(i) a recipient may use to submit, in*  
 25                       *a manner specified in the message, a reply*

1           *electronic mail message or other form of*  
 2           *Internet-based communication requesting*  
 3           *not to receive future commercial electronic*  
 4           *mail messages from that sender at the elec-*  
 5           *tronic mail address where the message was*  
 6           *received; and*

7           *(ii) remains capable of receiving such*  
 8           *messages or communications for no less*  
 9           *than 30 days after the transmission of the*  
 10          *original message.*

11          *(B) MORE DETAILED OPTIONS POSSIBLE.—*

12          *The person initiating a commercial electronic*  
 13          *mail message may comply with subparagraph*  
 14          *(A)(i) by providing the recipient a list or menu*  
 15          *from which the recipient may choose the specific*  
 16          *types of commercial electronic mail messages the*  
 17          *recipient wants to receive or does not want to re-*  
 18          *ceive from the sender, if the list or menu includes*  
 19          *an option under which the recipient may choose*  
 20          *not to receive any unsolicited commercial elec-*  
 21          *tronic mail messages from the sender.*

22          *(C) TEMPORARY INABILITY TO RECEIVE*

23          *MESSAGES OR PROCESS REQUESTS.—A return*  
 24          *electronic mail address or other mechanism does*  
 25          *not fail to satisfy the requirements of subpara-*

graph (A) if it is unexpectedly and temporarily unable to receive messages or process requests due to technical or capacity problems, if the technical or capacity problems were not reasonably foreseeable in light of the potential volume of response messages or requests, and if the problem with receiving messages or processing requests is corrected within a reasonable time period.

(D) *EXCEPTION.*—The requirements of this paragraph shall not apply to a message that is a transactional or relationship message.

(4) *PROHIBITION OF TRANSMISSION OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL AFTER OBJECTION.*—If a recipient makes a request using a mechanism provided pursuant to paragraph (3) not to receive some or any unsolicited commercial electronic mail messages from such sender, then it is unlawful—

(A) for the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of an unsolicited commercial electronic mail message that falls within the scope of the request;

(B) for any person acting on behalf of the sender to initiate the transmission to the recipient, more than 10 business days after the receipt

1        *of such request, of an unsolicited commercial*  
 2        *electronic mail message that such person knows*  
 3        *or consciously avoids knowing falls within the*  
 4        *scope of the request;*

5            *(C) for any person acting on behalf of the*  
 6        *sender to assist in initiating the transmission to*  
 7        *the recipient, through the provision or selection*  
 8        *of addresses to which the message will be sent, of*  
 9        *an unsolicited commercial electronic mail mes-*  
 10       *sage that the person knows, or consciously avoids*  
 11       *knowing, would violate subparagraph (A) or (B);*  
 12       *or*

13           *(D) for the sender, or any other person who*  
 14        *knows that the recipient has made such a re-*  
 15        *quest, to sell, lease, exchange, or otherwise trans-*  
 16        *fer or release the electronic mail address of the*  
 17        *recipient (including through any transaction or*  
 18        *other transfer involving mailing lists bearing the*  
 19        *electronic mail address of the recipient) for any*  
 20        *purpose other than compliance with this Act or*  
 21        *other provision of law.*

22           *(5) INCLUSION OF IDENTIFIER, OPT-OUT, AND*  
 23        *PHYSICAL ADDRESS IN UNSOLICITED COMMERCIAL*  
 24        *ELECTRONIC MAIL.—It is unlawful for any person to*  
 25        *initiate the transmission of any unsolicited commer-*



1        *cial electronic mail message to a protected computer*  
 2        *unless the message provides—*

3                (A) *clear and conspicuous identification*  
 4                *that the message is an advertisement or sollicita-*  
 5                *tion;*

6                (B) *clear and conspicuous notice of the op-*  
 7                *portunity under paragraph (3) to decline to re-*  
 8                *ceive further unsolicited commercial electronic*  
 9                *mail messages from the sender; and*

10                (C) *a valid physical postal address of the*  
 11                *sender.*

12        (b) *AGGRAVATED VIOLATIONS RELATING TO UNSOLIC-*  
 13        *ITED COMMERCIAL ELECTRONIC MAIL.—*

14                (1) *ADDRESS HARVESTING AND DICTIONARY AT-*  
 15        *TACKS.—*

16                (A) *IN GENERAL.—It is unlawful for any*  
 17                *person to initiate the transmission, to a pro-*  
 18                *ected computer, of an unsolicited commercial*  
 19                *electronic mail message that is unlawful under*  
 20                *subsection (a), or to assist in the origination of*  
 21                *such message through the provision or selection*  
 22                *of addresses to which the message will be trans-*  
 23                *mitted, if such person knows, should have known,*  
 24                *or consciously avoids knowing that—*

1           (i) *the electronic mail address of the*  
 2           *recipient was obtained using an automated*  
 3           *means from an Internet website or propri-*  
 4           *etary online service operated by another*  
 5           *person, and such website or online service*  
 6           *included, at the time the address was ob-*  
 7           *tained, a notice stating that the operator of*  
 8           *such website or online service will not give,*  
 9           *sell, or otherwise transfer addresses main-*  
 10          *tained by such website or online service to*  
 11          *any other party for the purposes of initi-*  
 12          *ating, or enabling others to initiate, unsol-*  
 13          *icited electronic mail messages; or*

14          (ii) *the electronic mail address of the*  
 15          *recipient was obtained using an automated*  
 16          *means that generates possible electronic*  
 17          *mail addresses by combining names, letters,*  
 18          *or numbers into numerous permutations.*

19          (B) *DISCLAIMER.*—*Nothing in this para-*  
 20          *graph creates an ownership or proprietary inter-*  
 21          *est in such electronic mail addresses.*

22          (2) *AUTOMATED CREATION OF MULTIPLE ELEC-*  
 23          *TRONIC MAIL ACCOUNTS.*—*It is unlawful for any per-*  
 24          *son to use scripts or other automated means to estab-*  
 25          *lish multiple electronic mail accounts or online user*

1        *accounts from which to transmit to a protected com-*  
 2        *puter, or enable another person to transmit to a pro-*  
 3        *ected computer, an unsolicited commercial electronic*  
 4        *mail message that is unlawful under subsection (a).*

5            (3) *RELAY OR RETRANSMISSION THROUGH UNAU-*  
 6        *THORIZED ACCESS.—It is unlawful for any person*  
 7        *knowingly to relay or retransmit an unsolicited com-*  
 8        *mercial electronic mail message that is unlawful*  
 9        *under subsection (a) from a protected computer or*  
 10       *computer network that such person has accessed with-*  
 11       *out authorization.*

12        (c) *COMPLIANCE PROCEDURES.—An action for viola-*  
 13       *tion of paragraph (2), (3), (4), or (5) of subsection (a) may*  
 14       *not proceed if the person against whom the action is brought*  
 15       *demonstrates that —*

16            (1) *the person has established and imple-*  
 17        *mented, with due care, reasonable practices and*  
 18        *procedures to effectively prevent violations of*  
 19        *such paragraph; and*

20            (2) *the violation occurred despite good faith*  
 21        *efforts to maintain compliance with such prac-*  
 22        *tices and procedures.*

1 **SEC. 6. BUSINESSES KNOWINGLY PROMOTED BY ELEC-**  
 2 **TRONIC MAIL WITH FALSE OR MISLEADING**  
 3 **TRANSMISSION INFORMATION.**

4 (a) *IN GENERAL.*—*It is unlawful for a person to pro-*  
 5 *mote, or allow the promotion of, that person’s trade or busi-*  
 6 *ness, or goods, products, property, or services sold, offered*  
 7 *for sale, leased or offered for lease, or otherwise made avail-*  
 8 *able through that trade or business, in a commercial elec-*  
 9 *tronic mail message the transmission of which is in viola-*  
 10 *tion of section 5(a)(1) if that person—*

11 (1) *knows, or should have known in ordinary*  
 12 *course of that person’s trade or business, that the*  
 13 *goods, products, property, or services sold, offered for*  
 14 *sale, leased or offered for lease, or otherwise made*  
 15 *available through that trade or business were being*  
 16 *promoted in such a message;*

17 (2) *received or expected to receive an economic*  
 18 *benefit from such promotion; and*

19 (3) *took no reasonable action—*

20 (A) *to prevent the transmission; or*

21 (B) *to detect the transmission and report it*  
 22 *to the Commission.*

23 (b) *LIMITED ENFORCEMENT AGAINST THIRD PAR-*  
 24 *TIES.*—

25 (1) *IN GENERAL.*—*Except as provided in para-*  
 26 *graph (2), a person (hereinafter referred to as the*

1       “third party”) that provides goods, products, prop-  
 2       erty, or services to another person that violates sub-  
 3       section (a) shall not be held liable for such violation.

4           (2) *EXCEPTION.*—Liability for a violation of  
 5       subsection (a) shall be imputed to a third party that  
 6       provides goods, products, property, or services to an-  
 7       other person that violates subsection (a) if that third  
 8       party—

9                   (A) owns, or has a greater than 50 percent  
 10       ownership or economic interest in, the trade or  
 11       business of the person that violated subsection  
 12       (a); or

13                   (B)(i) has actual knowledge that goods,  
 14       products, property, or services are promoted in a  
 15       commercial electronic mail message the trans-  
 16       mission of which is in violation of section  
 17       5(a)(1); and

18                   (ii) receives, or expects to receive, an eco-  
 19       nomic benefit from such promotion.

20       (c) *EXCLUSIVE ENFORCEMENT BY FTC.*—Subsections  
 21       (e) and (f) of section 7 do not apply to violations of this  
 22       section.

23   **SEC. 7. ENFORCEMENT BY FEDERAL TRADE COMMISSION.**

24       (a) *VIOLATION IS UNFAIR OR DECEPTIVE ACT OR*  
 25       *PRACTICE.*—Except as provided in subsection (b), this Act

1 *shall be enforced by the Commission as if the violation of*  
 2 *this Act were an unfair or deceptive act or practice pro-*  
 3 *scribed under section 18(a)(1)(B) of the Federal Trade*  
 4 *Commission Act (15 U.S.C. 57a(a)(1)(B)).*

5 (b) *ENFORCEMENT BY CERTAIN OTHER AGENCIES.—*  
 6 *Compliance with this Act shall be enforced—*

7 (1) *under section 8 of the Federal Deposit Insur-*  
 8 *ance Act (12 U.S.C. 1818), in the case of—*

9 (A) *national banks, and Federal branches*  
 10 *and Federal agencies of foreign banks, and any*  
 11 *subsidiaries of such entities (except brokers, deal-*  
 12 *ers, persons providing insurance, investment*  
 13 *companies, and investment advisers), by the Of-*  
 14 *fice of the Comptroller of the Currency;*

15 (B) *member banks of the Federal Reserve*  
 16 *System (other than national banks), branches*  
 17 *and agencies of foreign banks (other than Fed-*  
 18 *eral branches, Federal agencies, and insured*  
 19 *State branches of foreign banks), commercial*  
 20 *lending companies owned or controlled by for-*  
 21 *oreign banks, organizations operating under sec-*  
 22 *tion 25 or 25A of the Federal Reserve Act (12*  
 23 *U.S.C. 601 and 611), and bank holding compa-*  
 24 *nies and their nonbank subsidiaries or affiliates*  
 25 *(except brokers, dealers, persons providing insur-*

1            *ance, investment companies, and investment ad-*  
 2            *visers), by the Board;*

3            *(C) banks insured by the Federal Deposit*  
 4            *Insurance Corporation (other than members of*  
 5            *the Federal Reserve System) insured State*  
 6            *branches of foreign banks, and any subsidiaries*  
 7            *of such entities (except brokers, dealers, persons*  
 8            *providing insurance, investment companies, and*  
 9            *investment advisers), by the Board of Directors*  
 10           *of the Federal Deposit Insurance Corporation;*  
 11           *and*

12           *(D) savings associations the deposits of*  
 13           *which are insured by the Federal Deposit Insur-*  
 14           *ance Corporation, and any subsidiaries of such*  
 15           *savings associations (except brokers, dealers, per-*  
 16           *sons providing insurance, investment companies,*  
 17           *and investment advisers), by the Director of the*  
 18           *Office of Thrift Supervision;*

19           *(2) under the Federal Credit Union Act (12*  
 20           *U.S.C. 1751 et seq.) by the Board of the National*  
 21           *Credit Union Administration with respect to any*  
 22           *Federally insured credit union, and any subsidiaries*  
 23           *of such a credit union;*

24           *(3) under the Securities Exchange Act of 1934*  
 25           *(15 U.S.C. 78a et seq.) by the Securities and Ex-*

1        *change Commission with respect to any broker or*  
2        *dealer;*

3            *(4) under the Investment Company Act of 1940*  
4        *(15 U.S.C. 80a–1 et seq.) by the Securities and Ex-*  
5        *change Commission with respect to investment com-*  
6        *panies;*

7            *(5) under the Investment Advisers Act of 1940*  
8        *(15 U.S.C. 80b–1 et seq.) by the Securities and Ex-*  
9        *change Commission with respect to investment advis-*  
10       *ers registered under that Act;*

11           *(6) under State insurance law in the case of any*  
12        *person engaged in providing insurance, by the appli-*  
13        *cable State insurance authority of the State in which*  
14        *the person is domiciled, subject to section 104 of the*  
15        *Gramm-Bliley-Leach Act (15 U.S.C. 6701);*

16           *(7) under part A of subtitle VII of title 49,*  
17        *United States Code, by the Secretary of Transpor-*  
18        *tation with respect to any air carrier or foreign air*  
19        *carrier subject to that part;*

20           *(8) under the Packers and Stockyards Act, 1921*  
21        *(7 U.S.C. 181 et seq.) (except as provided in section*  
22        *406 of that Act (7 U.S.C. 226, 227)), by the Secretary*  
23        *of Agriculture with respect to any activities subject to*  
24        *that Act;*



1           (9) *under the Farm Credit Act of 1971 (12*  
 2           *U.S.C. 2001 et seq.) by the Farm Credit Administra-*  
 3           *tion with respect to any Federal land bank, Federal*  
 4           *land bank association, Federal intermediate credit*  
 5           *bank, or production credit association; and*

6           (10) *under the Communications Act of 1934 (47*  
 7           *U.S.C. 151 et seq.) by the Federal Communications*  
 8           *Commission with respect to any person subject to the*  
 9           *provisions of that Act.*

10          (c) *EXERCISE OF CERTAIN POWERS.—For the purpose*  
 11          *of the exercise by any agency referred to in subsection (b)*  
 12          *of its powers under any Act referred to in that subsection,*  
 13          *a violation of this Act is deemed to be a violation of a Fed-*  
 14          *eral Trade Commission trade regulation rule. In addition*  
 15          *to its powers under any provision of law specifically re-*  
 16          *ferred to in subsection (b), each of the agencies referred to*  
 17          *in that subsection may exercise, for the purpose of enforcing*  
 18          *compliance with any requirement imposed under this Act,*  
 19          *any other authority conferred on it by law.*

20          (d) *ACTIONS BY THE COMMISSION.—The Commission*  
 21          *shall prevent any person from violating this Act in the same*  
 22          *manner, by the same means, and with the same jurisdic-*  
 23          *tion, powers, and duties as though all applicable terms and*  
 24          *provisions of the Federal Trade Commission Act (15 U.S.C.*  
 25          *41 et seq.) were incorporated into and made a part of this*

1 *Act. Any entity that violates any provision of that subtitle*  
 2 *is subject to the penalties and entitled to the privileges and*  
 3 *immunities provided in the Federal Trade Commission Act*  
 4 *in the same manner, by the same means, and with the same*  
 5 *jurisdiction, power, and duties as though all applicable*  
 6 *terms and provisions of the Federal Trade Commission Act*  
 7 *were incorporated into and made a part of that subtitle.*

8 *(e) ENFORCEMENT BY STATES.—*

9 *(1) CIVIL ACTION.—In any case in which the at-*  
 10 *torney general of a State has reason to believe that an*  
 11 *interest of the residents of that State has been or is*  
 12 *threatened or adversely affected by any person engag-*  
 13 *ing in a practice that violates section 5 of this Act,*  
 14 *the State, as parens patriae, may bring a civil action*  
 15 *on behalf of the residents of the State in a district*  
 16 *court of the United States of appropriate jurisdiction*  
 17 *or in any other court of competent jurisdiction—*

18 *(A) to enjoin further violation of section 5*  
 19 *of this Act by the defendant; or*

20 *(B) to obtain damages on behalf of residents*  
 21 *of the State, in an amount equal to the greater*  
 22 *of—*

23 *(i) the actual monetary loss suffered by*  
 24 *such residents; or*

1                   (ii) the amount determined under  
2                   paragraph (2).

3           (2) *STATUTORY DAMAGES.*—

4                   (A) *IN GENERAL.*—For purposes of para-  
5                   graph (1)(B)(ii), the amount determined under  
6                   this paragraph is the amount calculated by mul-  
7                   tiplying the number of violations (with each sep-  
8                   arately addressed unlawful message received by  
9                   or addressed to such residents treated as a sepa-  
10                  rate violation) by—

11                   (i) up to \$100, in the case of a viola-  
12                   tion of section 5(a)(1); or

13                   (ii) \$25, in the case of any other viola-  
14                   tion of section 5.

15                   (B) *LIMITATION.*—For any violation of sec-  
16                   tion 5 (other than section 5(a)(1)), the amount  
17                   determined under subparagraph (A) may not ex-  
18                   ceed \$1,000,000.

19                   (C) *AGGRAVATED DAMAGES.*—The court  
20                   may increase a damage award to an amount  
21                   equal to not more than three times the amount  
22                   otherwise available under this paragraph if—

23                   (i) the court determines that the de-  
24                   fendant committed the violation willfully  
25                   and knowingly; or

1                   (ii) the defendant's unlawful activity  
2                   included one or more of the aggravating  
3                   violations set forth in section 5(b).

4                   (3) ATTORNEY FEES.—In the case of any success-  
5                   ful action under paragraph (1), the State shall be  
6                   awarded the costs of the action and reasonable attor-  
7                   ney fees as determined by the court.

8                   (4) RIGHTS OF FEDERAL REGULATORS.—The  
9                   State shall serve prior written notice of any action  
10                  under paragraph (1) upon the Federal Trade Com-  
11                  mission or the appropriate Federal regulator deter-  
12                  mined under subsection (b) and provide the Commis-  
13                  sion or appropriate Federal regulator with a copy of  
14                  its complaint, except in any case in which such prior  
15                  notice is not feasible, in which case the State shall  
16                  serve such notice immediately upon instituting such  
17                  action. The Federal Trade Commission or appro-  
18                  priate Federal regulator shall have the right—

19                       (A) to intervene in the action;

20                       (B) upon so intervening, to be heard on all  
21                       matters arising therein;

22                       (C) to remove the action to the appropriate  
23                       United States district court; and

24                       (D) to file petitions for appeal.

1           (5) *CONSTRUCTION.*—*For purposes of bringing*  
 2           *any civil action under paragraph (1), nothing in this*  
 3           *Act shall be construed to prevent an attorney general*  
 4           *of a State from exercising the powers conferred on the*  
 5           *attorney general by the laws of that State to—*

6                     (A) *conduct investigations;*

7                     (B) *administer oaths or affirmations; or*

8                     (C) *compel the attendance of witnesses or*  
 9           *the production of documentary and other evi-*  
 10          *dence.*

11          (6) *VENUE; SERVICE OF PROCESS.*—

12                    (A) *VENUE.*—*Any action brought under*  
 13           *paragraph (1) may be brought in the district*  
 14           *court of the United States that meets applicable*  
 15           *requirements relating to venue under section*  
 16           *1391 of title 28, United States Code.*

17                    (B) *SERVICE OF PROCESS.*—*In an action*  
 18           *brought under paragraph (1), process may be*  
 19           *served in any district in which the defendant—*

20                           (i) *is an inhabitant; or*

21                           (ii) *maintains a physical place of busi-*  
 22                           *ness.*

23          (7) *LIMITATION ON STATE ACTION WHILE FED-*  
 24           *ERAL ACTION IS PENDING.*—*If the Commission or*  
 25           *other appropriate Federal agency under subsection (b)*

1     *has instituted a civil action or an administrative ac-*  
 2     *tion for violation of this Act, no State attorney gen-*  
 3     *eral may bring an action under this subsection dur-*  
 4     *ing the pendency of that action against any defendant*  
 5     *named in the complaint of the Commission or the*  
 6     *other agency for any violation of this Act alleged in*  
 7     *the complaint.*

8     (f) *ACTION BY PROVIDER OF INTERNET ACCESS SERV-*  
 9     *ICE.*—

10           (1) *ACTION AUTHORIZED.*—A provider of Inter-  
 11     *net access service adversely affected by a violation of*  
 12     *section 5 may bring a civil action in any district*  
 13     *court of the United States with jurisdiction over the*  
 14     *defendant, or in any other court of competent juris-*  
 15     *diction, to—*

16                   (A) *enjoin further violation by the defend-*  
 17     *ant; or*

18                   (B) *recover damages in an amount equal to*  
 19     *the greater of—*

20                           (i) *actual monetary loss incurred by*  
 21     *the provider of Internet access service as a*  
 22     *result of such violation; or*

23                           (ii) *the amount determined under*  
 24     *paragraph (2).*

25           (2) *STATUTORY DAMAGES.*—

1           (A) *IN GENERAL.*—For purposes of para-  
 2           graph (1)(B)(ii), the amount determined under  
 3           this paragraph is the amount calculated by mul-  
 4           tiplying the number of violations (with each sep-  
 5           arately addressed unlawful message that is  
 6           transmitted or attempted to be transmitted over  
 7           the facilities of the provider of Internet access  
 8           service, or that is transmitted or attempted to be  
 9           transmitted to an electronic mail address ob-  
 10          tained from the provider of Internet access serv-  
 11          ice in violation of section 5(b)(1)(A)(i), treated  
 12          as a separate violation) by—

13                   (i) up to \$100, in the case of a viola-  
 14                   tion of section 5(a)(1); or

15                   (ii) \$25, in the case of any other viola-  
 16                   tion of section 5.

17          (B) *LIMITATION.*—For any violation of sec-  
 18          tion 5 (other than section 5(a)(1)), the amount  
 19          determined under subparagraph (A) may not ex-  
 20          ceed \$1,000,000.

21          (C) *AGGRAVATED DAMAGES.*—The court  
 22          may increase a damage award to an amount  
 23          equal to not more than three times the amount  
 24          otherwise available under this paragraph if—

1                   (i) the court determines that the de-  
 2                   fendant committed the violation willfully  
 3                   and knowingly; or

4                   (ii) the defendant's unlawful activity  
 5                   included one or more of the aggravated vio-  
 6                   lations set forth in section 5(b).

7                   (3) *ATTORNEY FEES.*—In any action brought  
 8                   pursuant to paragraph (1), the court may, in its dis-  
 9                   cretion, require an undertaking for the payment of  
 10                  the costs of such action, and assess reasonable costs,  
 11                  including reasonable attorneys' fees, against any  
 12                  party.

13 **SEC. 8. EFFECT ON OTHER LAWS.**

14                  (a) *FEDERAL LAW.*—

15                  (1) Nothing in this Act shall be construed to im-  
 16                  pair the enforcement of section 223 or 231 of the  
 17                  Communications Act of 1934 (47 U.S.C. 223 or 231,  
 18                  respectively), chapter 71 (relating to obscenity) or 110  
 19                  (relating to sexual exploitation of children) of title 18,  
 20                  United States Code, or any other Federal criminal  
 21                  statute.

22                  (2) Nothing in this Act shall be construed to af-  
 23                  fect in any way the Commission's authority to bring  
 24                  enforcement actions under *FTC Act* for materially



1     *false or deceptive representations or unfair practices*  
2     *in commercial electronic mail messages.*

3     **(b) STATE LAW.—**

4             **(1) IN GENERAL.—***This Act supersedes any stat-*  
5     *ute, regulation, or rule of a State or political subdivi-*  
6     *sion of a State that expressly regulates the use of elec-*  
7     *tronic mail to send commercial messages, except for*  
8     *any such statute, regulation, or rule that prohibits*  
9     *falsity or deception in any portion of a commercial*  
10    *electronic mail message or information attached there-*  
11    *to.*

12            **(2) STATE LAW NOT SPECIFIC TO ELECTRONIC**  
13    **MAIL.—***This Act shall not be construed to preempt the*  
14    *applicability of State laws that are not specific to*  
15    *electronic mail, including State trespass, contract, or*  
16    *tort law, and State laws relating to acts of fraud or*  
17    *computer crime.*

18            **(c) NO EFFECT ON POLICIES OF PROVIDERS OF**  
19    **INTERNET ACCESS SERVICE.—***Nothing in this Act shall be*  
20    *construed to have any effect on the lawfulness or unlawfulness,*  
21    *under any other provision of law, of the adoption, im-*  
22    *plementation, or enforcement by a provider of Internet ac-*  
23    *cess service of a policy of declining to transmit, route, relay,*  
24    *handle, or store certain types of electronic mail messages.*

1 **SEC. 9. RECOMMENDATIONS CONCERNING DO-NOT-EMAIL**  
2 **REGISTRY.**

3 *Not later than 6 months after the Federal Trade Com-*  
4 *mission has completed implementation of its national tele-*  
5 *marketing Do-Not-Call list, the Commission shall transmit*  
6 *to the Congress recommendations for a workable plan and*  
7 *timetable for creating a nationwide marketing Do-Not-*  
8 *Email list modeled on the Do-Not-Call list, or an expla-*  
9 *nation of any practical, technical, security, or privacy-re-*  
10 *lated issues that cause the Commission to recommend*  
11 *against creating such a list.*

12 **SEC. 10. STUDY OF EFFECTS OF UNSOLICITED COMMER-**  
13 **CIAL ELECTRONIC MAIL.**

14 *(a) IN GENERAL.—Not later than 24 months after the*  
15 *date of the enactment of this Act, the Commission, in con-*  
16 *sultation with the Department of Justice and other appro-*  
17 *priate agencies, shall submit a report to the Congress that*  
18 *provides a detailed analysis of the effectiveness and enforce-*  
19 *ment of the provisions of this Act and the need (if any)*  
20 *for the Congress to modify such provisions.*

21 *(b) REQUIRED ANALYSIS.—The Commission shall in-*  
22 *clude in the report required by subsection (a)—*

23 *(1) an analysis of the extent to which techno-*  
24 *logical and marketplace developments, including*  
25 *changes in the nature of the devices through which*  
26 *consumers access their electronic mail messages, may*

1       *affect the practicality and effectiveness of the provi-*  
2       *sions of this Act;*

3           *(2) analysis and recommendations concerning*  
4       *how to address unsolicited commercial electronic mail*  
5       *that originates in or is transmitted through or to fa-*  
6       *cilities or computers in other nations, including ini-*  
7       *tiatives or policy positions that the Federal govern-*  
8       *ment could pursue through international negotiations,*  
9       *fora, organizations, or institutions; and*

10          *(3) analysis and recommendations concerning*  
11       *options for protecting consumers, including children,*  
12       *from the receipt and viewing of unsolicited commer-*  
13       *cial electronic mail that is obscene or pornographic.*

14   **SEC. 11 SEPARABILITY.**

15       *If any provision of this Act or the application thereof*  
16       *to any person or circumstance is held invalid, the remain-*  
17       *der of this Act and the application of such provision to*  
18       *other persons or circumstances shall not be affected.*

19   **SEC. 12. EFFECTIVE DATE.**

20       *The provisions of this Act shall take effect 120 days*  
21       *after the date of the enactment of this Act.*

**Calendar No. 209**

108TH CONGRESS  
1ST SESSION

**S. 877**

**[Report No. 108-102]**

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**A BILL**

To regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

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JULY 16, 2003

Reported with an amendment